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Afghanistan, Angola, Argentina, Armenia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Cameroon, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Iceland, Ireland, Italy, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Monaco, Mongolia, Netherlands, New Zealand, Norway, Panama, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela: draft resolution

Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Recalling article 5 of the Universal Declaration of Human Rights,[1] article 7 of the International Covenant on Civil and Political Rights,[2] the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[3] and its resolution 39/46 of 10 December 1984, by which it adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and all its subsequent relevant resolutions,

Recalling that freedom from torture is a right that must be protected under all circumstances, including in times of internal or international disturbance or armed conflict,

Recalling also that the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, firmly declared that efforts to eradicate torture should, first

[1] Resolution 217 A (III).
[2] See resolution 2200 A (XXI), annex.
[3] Resolution 3452 (XXX), annex.

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and foremost, be concentrated on prevention and called for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention,[4]

Urging all Governments to promote the speedy and full implementation of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993,[5] in particular the section relating to freedom from torture, in which it is stated that States should abrogate legislation leading to impunity for those responsible for grave violations of human rights, such as torture, and prosecute such violations, thereby providing a firm basis for the rule of law,[6]

Recalling its resolution 36/151 of 16 December 1981, in which it noted with deep concern that acts of torture took place in various countries, recognized the need to provide assistance to the victims in a purely humanitarian spirit and established the United Nations Voluntary Fund for Victims of Torture,

Recalling also the recommendation in the Vienna Declaration and Programme of Action that high priority should be given to providing the necessary resources to assist victims of torture and effective remedies for their physical, psychological and social rehabilitation, inter alia, through additional contributions to the Fund,[7]

Noting with satisfaction the existence of a considerable international network of centres for the rehabilitation of victims of torture, which plays an important role in providing assistance to victims of torture, and the collaboration of the Fund with the centres,

Commending the persistent efforts by non-governmental organizations to combat torture and to alleviate the suffering of victims of torture,

Mindful of the proclamation by the General Assembly in its resolution 52/149 of 12 December 1997 of 26 June as the United Nations International Day in Support of Victims of Torture,

1. *Condemns* all forms of torture, including through intimidation, as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

2. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have taken place, and that national legal systems should ensure that the victims of such acts obtain redress and are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation;

3. *Draws the attention* of Governments to the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment annexed to the present resolution, and strongly encourages

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[4] A/CONF.157/24 (Part I), chap. III, sect. II, para. 61.

[5] Ibid., chap. III.

[6] Ibid., sect. II, paras. 54-61.

[7] Ibid., para. 59.

Governments to reflect upon the Principles as a useful tool in efforts to combat torture;

4. *Notes with appreciation* that one hundred and twenty-two States have become parties to the Convention;

5. *Urges* all States that have not yet done so to become parties to the Convention as a matter of priority;

6. *Invites* all States ratifying or acceding to the Convention and those States that are parties to the Convention and have not yet done so to consider joining the States parties that have already made the declarations provided for in articles 21 and 22 of the Convention and to consider the possibility of withdrawing their reservations to article 20;

7. *Urges* all States parties to the Convention to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

8. *Urges* States parties to comply strictly with their obligations under the Convention, including their obligation to submit reports in accordance with article 19 of the Convention, in view of the high number of reports not submitted, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee;

9. *Emphasizes* the obligation of States parties under article 10 of the Convention to ensure education and training for personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

10. *Stresses*, in this context, that States must not punish personnel referred to in paragraph 9 above for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

11. *Welcomes* the work of the Committee against Torture, and takes note of the report of the Committee,[8] submitted in accordance with article 24 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

12. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established in General Assembly resolution 48/141 of 20 December 1993, to continue to provide, at the request of Governments, advisory services for the preparation of national reports to the Committee and for the prevention of torture, as well as technical assistance in the development, production and distribution of teaching material for this purpose;

13. *Urges* States parties to take fully into account the conclusions and recommendations made by the Committee after its consideration of their reports;

14. *Urges* the inter-sessional open-ended Working Group of the Commission on Human Rights on the development of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to complete as soon as possible a final text for submission to the General Assembly, through the Economic and Social Council, for consideration and adoption;

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[8] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 44* (A/55/44).

15. *Takes note with appreciation* of the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment,[9] describing the overall trends and developments with regard to his mandate, and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture;

16. *Invites* the Special Rapporteur to continue to examine questions of torture and other cruel, inhuman or degrading treatment or punishment directed against women, and conditions conducive to such torture, and to make appropriate recommendations for the prevention and redress of gender-specific forms of torture, including rape or any other form of sexual violence, and to exchange views with the Special Rapporteur on violence against women, its causes and consequences, with a view to enhancing further their effectiveness and mutual cooperation;

17. *Also invites* the Special Rapporteur to continue to consider questions relating to the torture of children and conditions conducive to such torture and other cruel, inhuman or degrading treatment or punishment and to make appropriate recommendations for the prevention of such torture;

18. *Calls upon* all Governments to cooperate with and to assist the Special Rapporteur in the performance of his task, in particular by supplying all necessary information requested by him, to react appropriately and expeditiously to his urgent appeals and to give serious consideration to his requests to visit their countries, and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations;

19. *Approves* the methods of work employed by the Special Rapporteur, in particular with regard to urgent appeals, reiterates the need for him to be able to respond effectively to credible and reliable information that comes before him, invites him to continue to seek the views and comments of all concerned, in particular Member States, and expresses its appreciation for the discreet and independent way in which he continues to carry out his work;

20. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by Governments to his recommendations, visits and communications, including progress made and problems encountered;

21. *Stresses* the need for the continued regular exchange of views between the Committee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

22. *Expresses its gratitude and appreciation* to the Governments, organizations and individuals that have already contributed to the United Nations Voluntary Fund for Victims of Torture;

23. *Stresses* the importance of the work of the Board of Trustees of the Fund, and appeals to all Governments and organizations to contribute annually to the

[9] A/55/290.

Fund, preferably by 1 March before the annual meeting of the Board of Trustees of the Fund, if possible with a substantial increase in the level of contributions, so that consideration may be given to the ever increasing demand for assistance;

24. *Requests* the Secretary-General to transmit to all Governments the appeals of the General Assembly for contributions to the Fund and to continue to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

25. *Also requests* the Secretary-General to assist the Board of Trustees of the Fund in its appeal for contributions and in its efforts to make better known the existence of the Fund and the financial means currently available to it, as well as in its assessment of the global need for international funding of rehabilitation services for torture victims and, in this effort, to make use of all existing possibilities, including the preparation, production and dissemination of information materials;

26. *Further requests* the Secretary-General to ensure the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture, commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture;

27. *Invites* donor countries and recipient countries to consider including in their bilateral programmes and projects relating to the training of armed forces, security forces, prison and police personnel, as well as health-care personnel, matters relating to the protection of human rights and the prevention of torture and to keep in mind a gender perspective;

28. *Calls upon* all Governments, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

29. *Requests* the Secretary-General to submit to the Commission on Human Rights at its fifty-seventh session and to the General Assembly at its fifty-sixth session a report on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and a report on the operations of the United Nations Voluntary Fund for the Victims of Torture;

30. *Decides* to consider at its fifty-sixth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment.

Annex

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter torture or other ill-treatment) include the following:

(i) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(ii) Identification of measures needed to prevent recurrence;

(iii) Facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry.[10] The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

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[10] Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.[10]

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert should promptly prepare an accurate written report. This report should include at least the following:

(i) Circumstances of the interview: name of the subject and name affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;

(ii) History: a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A

recommendation for any necessary medical and psychological treatment and/or further examination should be given;

(v) Authorship: the report should clearly identify those carrying out the examination and should be signed.

(c) The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.